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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945 46

No. 750 35

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER,

vs.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JANUARY 15, 1946.

CERTIORARI GRANTED FEBRUARY 25, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

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[fols. 1-6] **IN SUPREME COURT OF ILLINOIS**

No. 28474

PEOPLE ex Rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CHICAGO WASTE AND TEXTILE COMPANY, a Corporation, et al., Defendants;

On Appeal of CARTER H. HARRISON, Collector of Internal Revenue, First District of Illinois, Appellant

Appeal, Circuit Court, Cook County, 42C 8910

[fol. 7]

Abstract of Record from Circuit Court of Cook County— Filed November 27, 1944

COMPLAINT—Filed June 29, 1942

Complaint filed on the 29th day of June, 1942, alleges:

(1) That at all times hereinafter mentioned, plaintiff herein was and is now a sovereign body politic.

(2) That Francis B. Murphy is the Director of Labor of the Department of Labor of the State of Illinois; that as such he is an officer of the State Government of the State of [fol. 8] Illinois, provided for by the Civil Administrative Code, being "An Act in Relation to the Civil Administration of the State Government," approved March 7, 1917, as amended; that the Director of Labor of the State of Illinois is the Administrator of the Illinois Unemployment Compensation Act, as amended, and that the aforementioned Francis B. Murphy is the duly appointed, confirmed, qualified and acting Director of Labor of the Department of Labor of the State of Illinois.

(3) That the defendant, Chicago Waste & Textile Co., a corporation, had in its employ one or more individuals performing services for 1 in the State of Illinois, subsequent to June 30, 1937.

(4) That said defendant, Chicago Waste & Textile Co., a corporation, had in employment 6 or more individuals on some portion of a day within each of twenty or more calendar weeks in the year 1941.

(5) That in accordance with the Illinois Unemployment Compensation Act, as amended, there accrued and became payable by the defendant, Chicago Waste & Textile Co., a corporation, to the Director of Labor of the State of Illinois, contributions in a sum equal to 2.7% with respect to wages payable for employment occurring during the years 1938, 1939 and 1940, and 2.7% with respect to wages paid for employment occurring during the year 1941 and thereafter. That pursuant to Section 18 (a) (3) of the aforesaid Illinois Unemployment Compensation Act, as amended, interest has accrued upon such contributions at the rate of 1 per cent per month from the respective dates upon which such contributions became payable.

[fol. 9] (6) That Section 18 (a) (4) of the aforementioned Illinois Unemployment Compensation Act, as amended, provides in part as follows:

"(4) Penalties. Any employer who shall fail to file a report of wages paid to each of his workers for any period in the manner and within the time required by the provisions of this Act or the Rules and Regulations of the Director, or if the Director shall pursuant to such regulations extend the time for filing such report shall fail to file such report within such extended time, shall, in addition to any sum otherwise payable by him under the provisions of this Act, pay to the Director as a penalty a sum equal to 2 per cent of the contributions payable by such employer for such period, for each month or part thereof of such failure to file such report, provided that such penalties shall not exceed 10 per cent of the amount of such contributions."

That the defendant, Chicago Waste & Textile Co., a corporation, failed to file reports as required by the Director of Labor and the provisions of the Illinois Unemployment Compensation Act, as amended, for third and fourth calendar quarters of 1941 on or before the dates such contribution reports were due and that the Director of Labor of the State of Illinois did not extend the time for filing such contribution reports.

(7) That pursuant to the power vested in him by the Illinois Unemployment Compensation Act, the Director of Labor of the State of Illinois did on to-wit, the 30th day of October, 1937, adopt Regulation No. 2 as amended, which provides as follows:

"(a) Contributions for the six consecutive months beginning July 1, 1937, shall become due, and be paid, on or before the last day of January, 1938. On and after January 1, 1938, contributions shall become due and shall be paid [fol. 10] quarterly on or before the last day of the month next following the calendar quarter for which such contributions have accrued; except that any employer who is delinquent in filing a contribution report or in paying his contributions for any calendar quarter may be required to report and to pay contributions on a calendar month basis. (The calendar quarters above referred to are three-month periods ending March 31, June 30, September 30 and December 31.)"

(8) That in accordance with the provisions of Section 18 of the Illinois Unemployment Compensation Act, as amended, and Regulation No. 2 as adopted by the Director of Labor on October 30, 1937, effective October 30, 1937, as amended, it became the duty of the defendant, Chicago Waste & Textile Co., a corporation, to pay to the Director of Labor, contributions with respect to wages for employment occurring in the year 1938 and thereafter, quarterly, on or before the last day of the month next following the calendar quarter for which contributions accrued.

(9) That the claim of the Director of Labor of the State of Illinois is admitted by the defendant, Chicago Waste & Textile Co., a corporation; that said defendant has admitted its indebtedness for contributions to be as follows:

Period	Wages	Contributions	Interest at 1% Per Month From:	Penalties
1st quarter 1941	2,394.00	—		
2nd " 1941	3,466.89	—		
3rd " 1941	7,517.75	202.98	11-24-41	12.18
4th " 1941	10,281.13	277.59	2-1-42	16.62
1st " 1942	9,552.61	257.92	5-1-42	—
		$738.49		$28.80

[fol. 11] (10) That the liability for such contributions and the amount thereof is based upon reports filed by the defendant, Chicago Waste & Textile Co., a corporation.

(11) That demand for payment of said delinquent contributions, together with interest thereon at the rate of 1 per cent per month from the respective dates upon which said contributions were payable, and for the payment of the penalties due for failure to file contribution reports as above set forth, has been made upon the defendant, Chicago Waste & Textile Co., a corporation, by the Director of Labor of the State of Illinois, but no part of said delinquent contributions, interest or penalties has been paid by the defendant, Chicago Waste & Textile Co., a corporation, or by anyone on its behalf, and said indebtedness is still a valid and subsisting obligation due and owing by the defendant, Chicago Waste & Textile Co., a corporation, to the Director of Labor of the State of Illinois.

(12) That pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, which provides as follows:

"(a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become due. In all cases where [fol. 12] a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that determination and assessment of the Director made pursuant to the provisions of this Act became final."

There exists a continuing lien in favor of the Director of Labor of the State of Illinois upon all of the personal

property or rights thereto owned by the defendant, Chicago Waste & Textile Co., a corporation, on the 1st day of May, 1941, and used by it in connection with its trade, occupation, profession or business, and upon all such personal property or rights thereto, thereafter acquired by said defendant, Chicago Waste & Textile Co., a corporation. That such lien is for a sum equal to the amount of contributions, interest and penalties due from the defendant, Chicago Waste & Textile Co., a corporation, as above set forth.

(13) That on to-wit, the 3rd day of April, 1942, the Director of Labor of the State of Illinois caused to be filed with the Recorder of Deeds of Cook County in the State of Illinois, a notice of lien for contributions incurred by the aforementioned defendant, Chicago Waste & Textile Co., a corporation, for the third calendar quarter of 1941 which said notice of lien dated the 3rd day of April, 1942, was recorded by the aforesaid Recorder of Deeds as Document No. 12869342, a true and correct copy of which is attached hereto and made a part hereof, marked Plaintiff's Exhibit "A."

(14) That on to-wit, the 8th day of May, 1942, the Director of Labor of the State of Illinois caused to be filed [fol. 13] with the Recorder of Deeds of Cook County in the State of Illinois, a notice of lien for contributions incurred by the aforementioned defendant, Chicago Waste & Textile Co., a corporation, for the fourth calendar quarter of 1941, which said notice of lien dated the 8th day of May, 1942, was recorded by the aforesaid Recorder of Deeds as Document No. 12889475, a true and correct copy of which is attached hereto and made a part hereof, marked Plaintiff's Exhibit "B."

(15) That on to-wit, the 20th day of May, 1942, the Director of Labor of the State of Illinois caused to be filed with the Recorder of Deeds of Cook County in the State of Illinois, a notice of lien for contributions incurred by the aforementioned defendant, Chicago Waste & Textile Co., a corporation, for the first calendar quarter of 1942, which said notice of lien dated the 20th day of May, 1942, was recorded by the aforesaid Recorder of Deeds as Document No. 12896060, a true and correct copy of which is attached hereto and made a part hereof, marked Plaintiff's Exhibit "C."

(16) That in accordance with the provisions of Section 26 of the Illinois Unemployment Compensation Act, as amended, it is the duty of the defendant, Chicago Waste & Textile Co., a corporation, to file in this proceeding, a full and complete schedule under oath, of all personal property and rights thereto which it owned at the time the aforementioned contributions became due or which it subsequently acquired, and to indicate upon such schedule the property so owned by it, which was or is used by it in connection with its trade, occupation, profession or business.

[fol. 14] (17) That Paragraph 26(d) of the Illinois Unemployment Compensation Act, as amended, provides as follows:

"(d) Priority of Lien. The lien herein created in favor of the director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to 'An act to protect employees and laborers in their claims for wages' approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided."

(18) That the defendant, Associated Agencies, Inc., a corporation, claims to have some interest in the property herein being foreclosed by virtue of a judgment it obtained in the Municipal Court of Chicago, Case No. 4164524, against the defendant, Chicago Waste & Textile Co., a corporation, but that the interest of the aforementioned defendant, Associated Agencies, Inc., a corporation, is subordinate and inferior to that of the lien of the Director of Labor as herein set forth for the reason that the execution upon said judgment was issued long after notice of the lien of the Director of Labor was recorded with the Recorder

of Deeds as aforesaid, said execution being issued on to-wit, the 3rd day of June, 1942.

[fol. 15] (19) That there are certain other persons whose names are unknown to the plaintiff who do, or may, claim some interest in, or lien upon the property herein being foreclosed or some part thereof, either as holders of chattel mortgages, conditional sales contracts, agreements of consignment, trust receipts, bills of sale, or otherwise, but that the name or names of such person or persons are unknown to the plaintiff, wherefore all such persons are made parties defendant to this complaint by the name and description of "unknown owners."

(20) That the defendant, Associated Agencies, Inc., a corporation, has requested the defendant, Albert J. Horan, Bailiff of the Municipal Court of Chicago to levy upon and sell at public auction the personal property which is the subject of this foreclosure; that the aforementioned defendant, Albert J. Horan, Bailiff of the Municipal Court of Chicago, has served notice that he will hold such sale on the 29th day of June, 1942, and that unless the aforementioned defendant, Albert J. Horan, Bailiff of the Municipal Court of Chicago, and "unknown owners" are restrained by this Court from seizing and disposing of the aforementioned personal property, the plaintiff will be irreparably damaged.

(21) That the plaintiff is informed and believes and therefore states upon such information and belief that the aforesaid defendant, Chicago Waste & Textile Co., a corporation, is insolvent and that the personal property subject to the lien herein being foreclosed, is scant security for the debt due the Director of Labor of the State of Illinois and that unless a receiver be appointed for all of the said [fol. 16] property pending a full and complete hearing upon the issues herein, the plaintiff will suffer financial loss and said property will be wasted.

Wherefore plaintiff prays:

(a) That the Court grant, without notice or plaintiff's bond, the People's Writ of Injunction directed to the defendant, Chicago Waste & Textile Co., a corporation, Associated Agencies, Inc., a corporation, Albert J. Horan, Bailiff of the Municipal Court of Chicago, and "unknown

owners," their agents, employees, attorneys and all Creditors of the defendant, Chicago Waste & Textile Co., a corporation, enjoining and restraining the aforementioned defendants, their agents, employees, attorneys and each of them from wasting, dissipating, concealing, selling, assigning, transferring, disposing of, encumbering or in any way or manner intermeddling with any of the personal property now or heretofore owned by the defendant, Chicago Waste & Textile Co., a corporation, and restraining all creditors from bringing any proceedings or actions in law or in equity against the defendant, Chicago Waste & Textile Co., a corporation, which touch upon its personal property or rights thereto used in connection with its business, without first having obtained leave of this Honorable Court.

Plaintiff alleges that its rights will be unduly damaged and that the Director of Labor will suffer irreparable injury if the said injunction prayed for in this cause is not issued forthwith and without notice, good cause having been shown that said injunction should issue without plaintiff's bond; that if notice of application for injunction is [fol. 17] given to the aforementioned defendants there is grave danger that they will dispose of, or otherwise transfer, assign, encumber or conceal the property of the defendant, Chicago Waste & Textile Co., a corporation, and thereby defeat the purpose of said injunction.

(b) That an order be entered by this Honorable Court commanding that the defendant, Chicago Waste & Textile Co., a corporation, file within a short day to be fixed by the Court, a full and complete schedule under oath, of all personal property and rights thereto, which it owned on the 1st day of May, 1941, or thereafter acquired, and to indicate upon such schedule the property so owned by it which was or is used by it in connection with its trade, occupation, profession or business.

(c) That the defendant, Chicago Waste & Textile Co., a corporation, be directed to pay to Francis B. Murphy, Director of Labor, the sum of $738.49, together with interest at the rate of 1 per cent per month thereon as hereinabove set forth, and penalties in the sum of $28.80, plus the costs incurred in this proceeding, by a short day to be fixed by the Court and that in default thereof the property of the defendant, Chicago Waste & Textile Co., a corporation,

subject to the lien of the Director of Labor be sold to satisfy the amount so due; that in case of such sale the defendants and each of them and all persons claiming by or under them, may be forever barred and foreclosed of and from all right in or to the aforesaid property. That if the proceeds of such sale shall exceed the amount necessary to satisfy the claim of the Director of Labor and the costs of this proceeding, [fol. 18] the balance if any, shall be paid to such parties as the Court shall find to be entitled thereto.

(d) That in the event the aforesaid property or rights thereto shall not bring at such sale a sufficient sum to pay the amount due to the plaintiff, that the plaintiff have judgment against such defendants as the Court shall find to be liable for the payment of such deficiency.

(e) That a receiver be appointed for said property, and the rights thereto, upon the filing of this complaint, with the usual powers of Receivers in Chancery, to take and have immediate possession of said property, and to collect the rents, issues and profits arising out of said property, and disburse the same under the order and direction of this Court.

(f) And that said plaintiff may have such other and further relief in the premises as the Court may in equity and good conscience see fit to decree.

[fol. 19] EXHIBIT "A" TO COMPLAINT

Notice of Lien for Contributions under the Illinois Unemployment Compensation Act, attached to the complaint as Exhibit "A" in the following form:

State of Illinois
Department of Labor

Division of Placement and Unemployment Compensation
222 West North Bank Drive
Chicago

Notice of Lien for Contributions Under the Illinois Unemployment Compensation Act

Account No. 56289

Pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, notice is hereby given that

there is due to the Director of Labor of the State of Illinois, from the following named employer:

Chicago Waste & Textile Co., Inc.
231 West Grand Avenue
Chicago, Illinois

contributions, together with interest and penalties thereon, as follows:

Period	Wages	Contribution Due	Interest	Penalties	Paid on Account	Balance Due
3rd Qtr. 1941	$7,517.75	$202.98	$10.35	$12.18	—	$225.51

plus additional interest upon the contributions set out above at the rate of 1% per month, or 1/30th of 1% per day, from the date of this notice until paid.

That, by virtue of the above named Section the amount of the aforesaid contributions, interest and penalties, together with such contributions, interest and penalties which may hereafter become due, are a lien, in favor of the Director of Labor of the State of Illinois, upon all the personal property or rights thereto, owned or hereafter acquired by the aforementioned employer, and used by it in connection with its trade, occupation, profession or business.

Francis B. Murphy, Director of Labor.

Dated this 3rd day of April, 1942.

[fol. 20] EXHIBIT "B" TO COMPLAINT

Notice of Lien for Contributions under the Illinois Unemployment Compensation Act, attached to the complaint as Exhibit "B" in the following form:

State of Illinois
Department of Labor

Division of Placement and Unemployment Compensation
222 West North Bank Drive
Chicago

Notice of Lien for Contributions Under the Illinois Unemployment Compensation Act

Account No. 56289

Pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, notice is hereby given that there is due to the Director of Labor of the State of Illinois, from the following named employer:

Chicago Waste & Textile Co., Inc.
231 West Grand Avenue
Chicago, Illinois

contributions, together with interest and penalties thereon, as follows:

Period	Wages	Contribution Due	Interest	Penalties	Paid on Account	Balance Due
4th qtr. 1941	$10,281.13	$277.59	$9.08	$16.62	—	$303.29

plus additional interest upon the contributions set out above at the rate of 1% per month, or 1/30th of 1% per day, from the date of this notice until paid.

That, by virtue of the above named Section the amount of the aforesaid contributions, interest and penalties, together with such contributions, interest and penalties which may hereafter become due, are a lien, in favor of the Director of Labor of the State of Illinois, upon all the personal property or rights thereto, owned or hereafter acquired by the aforementioned employer, and used by it in connection with its trade, occupation, profession or business.

Francis B. Murphy, Director of Labor.

Dated this 8th day of May, 1942.

[fol. 21] EXHIBIT "C" TO COMPLAINT

Notice of Lien for Contributions under the Illinois Unemployment Compensation Act, attached to the complaint as Exhibit "C" in the following form:

State of Illinois
Department of Labor

Division of Placement and Unemployment Compensation
222 West North Bank Drive
Chicago

Notice of Lien for Contributions Under the Illinois Unemployment Compensation Act

Account No. 56289

Pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, notice is hereby given that there is due to the Director of Labor of the State of Illinois, from the following named employer:

Chicago Waste & Textile Co., Inc.
231 West Grand Avenue
Chicago, Illinois

contributions, together with interest and penalties thereon, as follows:

Period	Wages	Contribution Due	Interest	Penalties	Paid on Account	Balance Due
1st qtr. 1942	$9,552.61	$257.92	$1.73	—	—	$259.65

plus additional interest upon the contributions set out above at the rate of 1% per month, or 1/30th of 1% per day, from the date of this notice until paid.

That, by virtue of the above named Section the amount of the aforesaid contributions, interest and penalties, together with such contributions, interest and penalties which may hereafter become due, are a lien, in favor of the Director of Labor of the State of Illinois, upon all the personal property or rights thereto, owned or hereafter acquired by the aforementioned employer, and used by it in connection with its trade, occupation, profession or business.

Francis B. Murphy, Director of Labor.

Dated this 20th day of May, 1942.

[fol. 22] ORDER OF WRIT OF INJUNCTION

Order of People's Writ of Injunction wherein it is ordered:

It Is, Therefore, Ordered that the People's Writ of Injunction issue without notice and without bond, directed to the defendant, Albert J. Horan, Bailiff of the Municipal Court of Chicago and to the defendant, Chicago Waste & Textile Co., a corporation, its agents, employees, attorneys, all creditors of said defendant and "unknown Owners" enjoining and restraining the defendant, Albert J. Horan, Bailiff of the Municipal Court of Chicago, "Unknown Owners" and the creditors of said defendant, Chicago Waste & Textile Co., a corporation, its agents, employees, attorneys, and each of them from wasting, dissipating, concealing, selling, assigning, transferring, disposing of, encumbering or in any way or manner intermeddling with any of the property, real or personal of said defendant, Chicago Waste & Textile Co., a corporation, and from in any manner interfering with the Receiver to be appointed herein in the discharge of his duties hereunder, or the property in his possession, or any of the estate, effects, assets, books, records or documents of said defendant, Chicago Waste & Textile Co., a corporation, and restraining all creditors and "Unknown Owners" from bringing any proceedings of any nature in any Court except the court in which this cause is now pending against the defendant, Chicago Waste & Textile Co., a corporation, until further order of this Court.

ORDER APPOINTING RECEIVER

Order appointing Maurice Klein receiver for the property of the Chicago Waste and Textile Company; to take immediate possession of said property, collect rents and to disburse same under order and direction of the Court.

ORDER DIRECTING RECEIVER TO APPOINT ATTORNEY

Order of Court directing Maurice Klein to employ J. R. Cohler as his attorney, and directing said receiver forthwith to take possession of the premises and the business, [fol. 23] property and assets contained therein located at 1234 North Halsted Street, Chicago, Illinois.

CLAIM OF THE UNITED STATES FOR FEDERAL INSURANCE CONTRIBUTION TAXES

Claim of the United States for Federal Insurance Contribution Taxes in the following form:

CLAIM OF THE UNITED STATES FOR TAXES IN THE CIRCUIT COURT OF ILLINOIS

No. 42 C 8910 Receivership

In the Matter of STATE OF ILLINOIS FOR THE USE OF FRANCIS B. MURPHY, vs. CHICAGO WASTE & TEXTILE COMPANY, INCORPORATED

STATE OF ——,
County of ——, ss:

Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says:

1. That Chicago Waste & Textile Company, Incorporated, above named, is justly and truly indebted to the United States in the sum of $202.07 with interest thereon as hereinafter stated.

2. That the nature of said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax and Statute involved	Year or Taxable Period ended	Amount of Tax	With Interest at the rate of 6% per annum until paid. Interest began:
EMPLOYMENT TAX Federal Insurance Contributions Act	P. E. 3/31/42	$202.07	6/19/42
TOTAL: $202.07—Plus statutory interest. (SEE RIDER ATTACHED)			

3. That no part of said debt has been paid, but that the same is now due and payable at the Office of the Collector [fol. 24] of Internal Revenue at Chicago, Illinois.

4. That there are no set-offs or counterclaims to said debt.

5. That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or

belief, for its use, had or received any security or securities for said debt, except statutory liens.

6. That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon.

7. That said debt has priority, and must be paid in full in advance of distribution to creditors, as and to the extent provided in Section 64 or Section 659 of the Bankruptcy Act, Section 3466 of the Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or other person who fails to pay the claims of the United States in accordance with their priority.

Dated this 6th day of October, 1942.

(Sgd.) Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois.

Subscribed and sworn to before me this 6th day of October, 1942. (Sgd.) Mary R. Richartz, Notary Public.

Rider

Of the accounts herein claimed $95.53 was levied as a tax under Section 801 of Title VIII of the Social Security Act. Any sums so levied and deducted from wages by an employer under Section 802 of said Act, and any assets into [fol. 25] which any such sums have been converted, constitute in accordance with the provisions of Section 807 (c) of the Social Security Act, Section 607 of the Revenue Act of 1934 and Article 204 of Regulations 91 promulgated by the Commissioner of Internal Revenue, a special fund in trust for the United States. Demand is hereby made for the immediate payment and turnover of all such sums and other assets so held in trust for the United States which are or may come into the possession of the receiver, trustee, debtor in possession, executor, administrator, assignee or other fiduciary representative herein.

Amended Claim of the United States

Amended claim of the United States for Federal Insurance Contribution Taxes and Federal Unemployment Taxes in the following form:

Supplemental Claim of the United States for Taxes

In the Circuit Court of Illinois.

No. 42 C 8910 Receivership

In the Matter of State of Illinois for the Use of Francis B. Murphy,

vs.

Chicago Waste & Textile Company, Incorporated

State of Illinois,
County of Cook, ss:

Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says:

1. That Chicago Waste & Textile Company, Incorporated, above named, is justly and truly indebted to the United States in the sum of $1,752.00 with interest thereon as hereinafter stated.

2. That the nature of said debt is internal revenue taxes due pursuant to law as follows:

[fol. 26]

Nature of Tax and Statute involved	Year or Taxable Period ended		Amount of Tax	With Interest at the rate of 6% per annum until paid. Interest began:
EMPLOYMENT TAX				
Federal Insurance	P. E.	6/30/41	Addl. $33.64	
Contributions Act		9/30/41	" 30.58	
" "		3/31/42	" 35.11	
" "		6/30/42	221.51	
Federal Unemployment	1941		831.43	
Tax Act	1942		599.73	

TOTAL: $1,752.00 Plus statutory interest.

THIS CLAIM SUPERSEDES AND CANCELS CLAIM FILED 10/15/42 in AMOUNT OF $1,467.53 (SEE RIDER ATTACHED)

AMENDED CLAIM

3. That no part of said debt has been paid, but that the same is now due and payable at the Office of the Collector of Internal Revenue at Chicago, Illinois.

4. That there are no set-offs or counterclaims to said debt.

5. That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens.

6. That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon.

7. That said debt has priority, and must be paid in full in advance of distribution to creditors, as and to the extent provided in Section 64 or Section 659 of the Bankruptcy Act, Section 3466 of the Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or other person who fails to pay the claims [fol. 27] of the United States in accordance with their priority.

Dated this 26th day of October, 1942.

(Sgd.) Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois.

Subscribed and sworn to before me this 26th day of October, 1942. (Sgd.) Mary R. Richartz, Notary Public.

Rider

Of the accounts herein claimed $134.38 was levied as a tax under Section 801 of Title VIII of the Social Security Act. Any sums so levied and deducted from wages by an employer under Section 802 of said Act, and any assets into which any such sums have been converted, constitute in accordance with the provisions of Section 807 (c) of the Social Security Act, Section 607 of the Revenue Act of 1934 and Article 204 of Regulations 91 promulgated by the Commissioner of Internal Revenue, a special fund in trust for the United States. Demand is hereby made for the im-

mediate payment and turnover of all such sums and other assets so held in trust for the United States which are or may come into the possession of the receiver, trustee, debtor in possession, executor, administrator, assignee or other fiduciary representative herein.

INTERVENING PETITION OF CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE

Intervening Petition of Carter H. Harrison, Collector of Internal Revenue, wherein it is alleged as follows:

1. That the said Collector has heretofore on, to-wit, the 9th day of October, 1942, filed a claim in these proceedings on account of the liability of the defendant herein to the United States of America for Employment Taxes under the Federal Insurance Contributions Act for the period ending [fol. 28] March 31, 1942, in the sum of $202.07, plus statutory interest thereon until paid.

2. And, further that the said Collector has heretofore on, to-wit, the 15th day of October, 1942, filed a supplemental claim for Employment taxes under the Federal Insurance Contributions Act for the period ended March 31, 1942, additional, and for the period ended June 30, 1942, and under the Federal Unemployment Tax Act for the years 1941 and 1942, all in the total sum of $1,467.53, plus statutory interest until paid.

3. And further, that the said Collector has heretofore on, to-wit, the 28th day of October, 1942, filed an Amended Claim for Employment Tax under the Federal Insurance Contributions Act for certain periods in the year 1941 for additional taxes and under the Federal Unemployment Tax Act for the years 1941 and 1942, all in the total sum of $1,742.99, plus statutory interest, which latter claim supersedes and cancels claim filed on October 15, 1942, as herein shown, in the amount of $1,467.53.

4. That no part of the claims filed herein as set out, has been paid.

5. That the defendant herein is insolvent and unable to pay and discharge in full all of its indebtedness.

6. That by virtue of the provisions of Section 3466 of the United States Revised Statutes, the aforesaid claims, filed

herein by the said Collector, are entitled to priority of payment immediately after expenses of administration and before payment is made to any of the creditors who have filed claims in these proceedings.

Wherefore, it is respectfully prayed that the said claims filed herein by the said Collector of Internal Revenue on account of the liability of the defendant herein to the United States of America for Employment Tax under the Federal Insurance Contributions Act and under the Federal Unemployment Tax Act in the total amounts of $202.07 and $1,742.00 respectively, be allowed in the full amounts for [fol. 29] which they were filed, plus statutory interest thereon until paid, and that said claims be allowed as claims entitled to priority of payment immediately after costs of administration and before payment to any of the creditors of the defendant herein, and for such other and further relief in the premises as to the Court shall seem meet.

Order granting leave to Carter H. Harrison to file instanter his verified petition as above and ordering that plaintiff and all parties of interest answer said petition within twenty days.

Answer of Director of Labor to Petition of Collector of Internal Revenue

Answer of Francis B. Murphy, Director of Labor, to Petition of Carter H. Harrison, Collector of Internal Revenue, wherein it is stated:

1. That this respondent admits that the said Carter H. Harrison, as Collector of Internal Revenue, filed a claim in these proceedings on the 9th day of October, 1942, on account of the liability of the defendant, Chicago Waste and Textile Company, a corporation, to the United States of America for employment taxes under the Federal Insurance Contributions Act for the period ending March 31, 1942 in the sum of $202.07, plus statutory interest thereon until paid.

2. And this respondent admits on, to-wit, the 15th day of October, 1942, said collector filed a supplemental claim for employment taxes under the Federal Insurance Contributions Act for the period ended March 31, 1942, additional, and for the period ended June 30, 1942, under the Federal

Unemployment Tax Act for the years 1941 and 1942, all in the sum of $1,467.53, plus statutory interest until paid.

3. And this respondent further answering, admits that the said collector on, to-wit, the 28th day of October, 1942, filed an Amended Claim for Employment Tax under the Federal Insurance Contributions Act for certain periods in the year 1941 for additional taxes and under the Federal [fol. 30] Unemployment Tax Act for the years 1941 and 1942, all in the total sum of $1,742.00, plus statutory interest, which latter claim supersedes and cancels claim filed on October 15, 1942, as herein shown, in the amount of $1,467.53.

4. And this respondent further answering, verily believes that no part of the claims filed herein by the said Collector Carter H. Harrison, as Collector of Internal Revenue, has been paid.

5. And this respondent further answering, admits that the defendant, Chicago Waste and Textile Company, a corporation, is insolvent and unable to pay and discharge in full all of its indebtedness.

6. This respondent denies that the claims filed by the said Collector are entitled to priority of payment under the provisions of Section 3466 of the United States Revised Statutes for the following reasons:

"(a) That this respondent has heretofore and to-wit, on the 29th day of June A. D. 1942, filed his complaint in equity for foreclosure of lien and the appointment of a receiver as will more fully appear from the complaint filed by this respondent for and on behalf of the People of the State of Illinois.

(b) That the defendant, Chicago Waste and Textile Company, a corporation, admitted its indebtedness in the sum of $738.49 and penalties amounting to $28.80 and in pursuance thereof, this respondent has caused the following liens to be filed with the Recorder of Deeds of Cook County in the State of Illinois, to-wit:

1. Notice of Lien filed April 3, 1942 for the third calendar quarter of 1941 as Document No. 12869342.

2. Notice of Lien filed on May 8, 1942 for the fourth quarter of 1941 as Document No. 12889475.

3. Notice of Lien filed on May 20, 1942 for the first calendar quarter of 1942 as Document No. 12896060.

[fol. 31] (c) That Paragraph 26(d) of the Illinois Unemployment Compensation Act, as amended, provides as follows:

"(d) Priority of Lien. The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to 'An Act to protect employees and laborers in their claims for wages' approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claims, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided."

(d) That this respondent caused a receiver to be appointed and the property of the defendant, Chicago Waste and Textile Company, a corporation, reduced to possession of said receiver and subsequently all personal property of said defendant was sold, with exception of certain property which was abandoned, in pursuance to an Order entered by this honorable court on July 23, 1942, thereby perfecting said liens and making them specific.

ORDER DIRECTING RECEIVER TO DEPOSIT BALANCE WITH CLERK AND APPROVING REPORT AND ACCOUNT OF RECEIVER

Order of Court ordering Receiver to deposit the balance of $677.81 with the Clerk of the Circuit Court of Cook County, subject to further order of Court; that the final report and account of the Receiver be approved and that said Receiver be discharged and liability on his bond terminated; that the Court reserves jurisdiction for the purpose

[fols. 32-33] of determining whether said monies so deposited with the Clerk shall be paid to the plaintiff or to the Collector of Internal Revenue, or shall be allocated between them.

ORDER DIRECTING THAT LIENS OF DIRECTOR OF LABOR BE GIVEN PRIORITY TO THE EXTENT OF 90% OF FUNDS ON DEPOSIT WITH CLERK AND THAT THE COLLECTOR OF INTERNAL REVENUE HAVE PRIORITY TO THE 10% REMAINING

Order of Judge Fisher as follows:

This matter coming up on hearing, and the Court being fully apprised of the premises herein, and having read the briefs filed and arguments made by opposing counsel with reference to the priority of the liens of the Director of Labor of the State of Illinois, over the claim of the Collector of Internal Revenue,

It Is Therefore Ordered, Adjudged and Decreed, that the liens of the Director of Labor of the State of Illinois, administrator of the Illinois Unemployment Compensation Act, be given priority to the extent of 90 per cent of the funds now on deposit with the Clerk of the Circuit Court, and that the Collector of Internal Revenue have priority as to the 10 per cent remaining.

Notice of Appeal of Carter H. Harrison, Collector of Internal Revenue.

Proof of service of Notice of Appeal.

Praecipe for Record and proof of service of Carter H. Harrison.

Affidavit of proof of service of Notice of Appeal and Praecipe for Record on Kanders-Steuber Company, Chicago, Illinois.

Certificate of Clerk of Circuit Court as to Transcript of Record.

J. Albert Woll, United States Attorney, Attorney for Appellant.

John B. Stephan, Assistant United States Attorney.

[fol. 34] IN SUPREME COURT OF ILLINOIS

EXCERPTS FROM APPELLEE'S BRIEF

And afterwards, to-wit: on the 6th day of January, A. D. 1945, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in this office a certain brief of appellee the heading of Argument I on page eight being in the words and figures following, to-wit:

> The extension of the priority given by Section 191, Title 31, U. S. C. (referred to as Section 3466) to liens or claims for unpaid unemployment compensation contributions so as to deprive the State of such contributions is inconsistent with the intent of Congress as expressed in the Social Security Act of 1935, Second Deficiency Appropriation Act of 1938, Section 1601 of the Internal Revenue Act of 1939 and Sections 601 and 602 of the Revenue Act of 1943.

And, also heading of Argument III, appearing on page thirty-one of brief of appellee, which is in the words and figures following, to-wit:

> Appellant may not invoke Section 3466 because it has neither alleged or shown that Chicago Waste and Textile Company was insolvent in the manner intended by the statute.

And, also heading of Argument IV, appearing on page thirty-five of brief of appellee, which is in the words and figures following, to-wit:

> Since the lien of the Director of Labor became specific and perfected prior to the appointment of a receiver by the Circuit Court, which was the earliest possible time that Section 3466 could apply, the claim of the United States has no priority over that of the Director.

And, also heading of Argument V, appearing on page thirty-nine of brief of appellee, which is in the words and figures following, to-wit:

> The claim of the Director of Labor is a secured claim and as such has complete priority over the unsecured claim of the United States.

[fols. 35-36] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ARGUMENT AND SUBMISSION—March 20, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by John B. Stephan for appellant and by William C. Wines for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 37] IN THE SUPREME COURT OF ILLINOIS

Docket Nos. 28474, 28490.—Agenda 22—March, 1945

THE PEOPLE FOR THE USE OF FRANCIS B. MURPHY, DIRECTOR OF LABOR, Appellee,

v.

CHICAGO WASTE & TEXTILE COMPANY et al.—(CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE, Appellant)

THE PEOPLE FOR THE USE OF FRANCIS B. MURPHY, DIRECTOR OF LABOR, Appellee,

v.

ADVERTISING REVIEW PUBLISHING COMPANY et al.—(UNITED STATES OF AMERICA, Appellant)

OPINION—May 23, 1945

MR. JUSTICE SMITH delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contributiontaxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Company. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court, whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due

the State, for appointment of a receiver and for an injunction restraining the sale of the property under the execution. Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which the court ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the [fol. 38] filing of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal Revenue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions raised by the parties in this particular case. Section 1600 of the Federal Unemploy-
[fol. 39] ment Tax Act (26 U. S. C. 1600) imposes an excise tax equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a)(3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b),) provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

[fol. 40] The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. This case is an appeal by the United States from a decree entered by the circuit court of Cook county. The appeal was also taken to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Rev- [fol. 41] enue and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing his lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

What we have heretofore said in this opinion in disposing of cause No. 28474 has no application to this case, for the reason that the taxes involved in this case accrued in the year 1938 and prior years. The assets of the in-

solvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(b) of the Federal Unemployment Tax Act, as enacted in the Revenue Code of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States under the Federal Unemployment Tax Act because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which reads as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent [fol. 42] debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was

January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 per cent of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment con- [fol. 43] tributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 per cent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 per cent of the Federal taxes be paid to the Federal government, regardless of the amount which the taxpayer might pay to the State, was to create a fund for the use of the Federal government in the administration of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the administration of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemploy-

ment compensation acts and to assist the States in the administration of such acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because the payments exacted thereunder [fol. 44] were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver of a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payments exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal

government. The full amount continues to be taxes due the Federal government either until it is all paid to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.* 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. In *United States* v. *Marxen*, 307 U. S. 200, 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; *Beaston* [fol. 45] v. *Farmers' Bank*, 12 Pet. 102, 9 L. ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. ed. 29.

Appellee also cites and relies on the case of *Rivard* v. *Bijou Furniture Co.* 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. ed. 638.

It follows that the claim of appellant was a debt due the United States from an insolvent debtor who had committed an act of bankruptcy under section 21 of chapter 3 of the Bankruptcy Act (11 U. S. C. 21,) by making a general assignment for the benefit of its creditors. Such claim was, therefore, entitled to priority of payment out of the assets of the insolvent debtor, unless the State of Illinois had such a lien on such assets as would remove them from the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contended by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property [fol. 46] of the debtor, was the filing of this suit on April 2, 1943, whereas the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of creditors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a distress warrant, which was levied on the

debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 425, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring [fol. 47] themselves. Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the beginning of the tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary

assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a longstanding Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 S. Ct. at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the [fol. 48] tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524; and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion

that the taxes due the Federal government from the insolvent debtor in this case were debts due the United States within the purview of section 3466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim of the Federal government. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 49-50] IN SUPREME COURT OF ILLINOIS

No. 28474

PEOPLE ex Rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CHICAGO WASTE AND TEXTILE COMPANY, a Corporation, et al.;

On Appeal of CARTER H. HARRISON, Collector of Internal Revenue, First District of Illinois, Appellant

Appeal from Circuit Court, Cook County, 42C 8910

JUDGMENT—May 23, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now,

being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the judgment of the Circuit Court of Cook County in this behalf rendered, Be Reversed, Annulled, Set Aside and Wholly for Nothing Esteemed, and this cause be remanded to the Circuit Court of Cook County with directions to enter an order directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor.

[fols. 51-53] In the Supreme Court of Illinois

[Title omitted]

Notice of Intention to File Petition for Rehearing—Filed May 29, 1945

Carter H. Harrison, Collector of Internal Revenue for the First Collection District of Illinois, Appellant herein in the above entitled appeal, hereby serves notice of his intention to file a petition for rehearing in the above entitled cause.

J. Albert Woll, United States Attorney, Attorney for Appellant.

Received this — day of May, A. D. 1945, a copy of the Appellant's Notice of Intention to file Petition for Rehearing in the above entitled appeal.

George F. Barrett, Attorney General of the State of Illinois.

[fol. 54] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR REHEARING—Filed June 16, 1945

MAY IT PLEASE THE COURT:

It is respectfully submitted that this Court should reconsider and revise its decision in the above entitled cause for the following reasons:

I

To the Extent that This Court Reversed the Ruling of the Lower Court Granting the Government 10% of the Fund, Because the State of Illinois Did Not Appeal

This is an appeal by Carter H. Harrison from an order of the Circuit Court of Cook County granting the the State of Illinois 90% of the funds on deposit and [fol. 55] the Collector of Internal Revenue 10% of said funds. The State of Illinois filed no cross appeal and therefore waived its right to request this Court to reverse the order of the lower court. The State of Illinois in its reply brief (p. 41) under the heading "Conclusion" respectfully urges "that the Order and Judgment of the Circuit Court of Cook County, Illinois, be affirmed". In view of the foregoing, it is respectfully urged that this Court erred in reversing the judgment of the lower Court and remanding the cause with directions to enter an order directing the payment of the entire fund on deposit to the Director of the Department of Labor of the State of Illinois.

II

No Consideration Has Been Given to the Fact That the Government's Claims Filed in the Lower Court Included Federal Insurance Contributions Taxes in the Amount of $522.91

In the proceedings in the lower Court the Government filed two claims totaling $1,954.07 plus interest (Abstract 17-20). Included in these claims was the sum of $522.91 due the Government for Federal Insurance Contributions Taxes for the period ending June 30, 1941 to the period ending June 30, 1942. No credit whatever is

allowed against Federal Insurance Contributions Taxes. They represent a tax of 1% withheld from employees' wages and 1% contributed by the employer, the total of which is payable direct to the Federal Government and disbursed only by the Government. The rider attached to both of the Government's claims (Abstract 18-21) states that the sum of $229.91 ($95.53 plus $134.38) has been deducted from wages by the employer and is a special fund in trust for the United States. It is there- [fol. 56] fore respectfully urged that Section 3466 of the Revised Statutes should be applicable to Federal Insurance Contributions Taxes against which the State has no interest or claim.

III.

Section 602 of the Revenue Act of 1943 Merely Extends the Time Within Which State Taxes May Be Paid and Credit Obtained. It Does Not Permit Credit Against Federal Unemployment Taxes Where the Fund Available Is Insufficient to Permit the Payment of State Taxes

Section 602 of the Revenue Act of 1943 was one of a number of amendments added to the Federal Unemployment Tax Act wherein by extending the time for obtaining credit for payments made to the State, the Federal Government sought to induce the taxpayer to pay delinquent Unemployment Taxes. The early amendments provided that credit might be obtained for payments made to the State if the assets of the taxpayer were in the control of a receiver appointed by the Court and the payment to the State was made within a specified period (usually 59 days). The latest amendment in this respect is Section 602(b) of the Revenue Act of 1943 which allows the taxpayer a credit for payments made to the State, without regard to date of payment, if the assets of the taxpayer are in the control of a receiver appointed by Court, between January 31 and June 30 following the year for which such taxes are due. It is respectfully submitted that where the fund available, as in this case ($677.81) is insufficient to pay the State tax ($738.49), the Federal priority under Section 3466 Revised Statutes attaches and does not permit the payment of State taxes. Payments made to the State under the Federal Act are in the nature of credits against the Federal tax

[fols. 57-58] and it was never contemplated that where the funds in the hands of the receiver were insufficient to pay the State in full that the State should receive the entire fund and the Government nothing.

Conclusion

For the reasons stated above, it is respectfully submitted that a rehearing should be allowed by this Court and that upon such rehearing the opinion of the Court be revised and the Circuit Court of Cook County, Illinois, be directed to enter an order,

(a) Directing that the funds on deposit be paid in full to the Collector of Internal Revenue

or in the alternative,

(b) Directing that claims of the Collector of Internal Revenue for Federal Insurance Contributions Taxes in the amount of $522.91 plus statutory interest be first paid and the balance remaining, if any, be paid, 90% to the Director of Labor of the State of Illinois and 10% to the Collector of Internal Revenue.

Respectfully submitted, Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, A. F. Prescott, C. Stanley Titus, Special Assistants to the Attorney General.

J. Albert Woll, United States Attorney, John B. Stephan, Assistant United States Attorney.

[fols. 59-60] In Supreme Court of Illinois

[Title omitted]

Order Denying Petition for Rehearing—September 17, 1945

And now on this day the Court having duly considered the Petition for Rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the Petition and denies a rehearing.

[fol. 61] IN SUPREME COURT OF ILLINOIS

Docket Nos. 28474, 28490. Agenda 22. March, 1945.

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Chicago Waste & Textile Company et al. (Carter H. Harrison, Collector of Internal Revenue, Appellant), The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Advertising Review Publishing Company, et al. (United States of America, Appellant)

MODIFIED OPINION—September 17, 1945

Mr. Justice SMITH delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contribution taxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Company. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due the State, for appointment of a receiver and for an injunction restraining the sale of the property under the execution. [fol. 62] Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which the court

ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the filing of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal Reve- [fol. 63] nue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant's claim is, in part, for taxes due under section 1600 of the Federal Unemployment Tax Act, and, in part, for Federal insurance contributions under section 801 of title VIII of the Social Security Act. We will consider first that part of the claim arising under the Federal Unemployment Tax Act.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191), which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions in connection with appellant's claim for priority as to the taxes due under the Federal Unemployment Tax Act. Section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600) imposes an excise [fol. 64] tax equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a) (3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due

date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602 (b)), provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, [fol. 65] 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. This [fol. 66] case is an appeal by the United States from a decree entered by the Circuit court of Cook county. The appeal was also taken to the Appellate Court for the First

District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Revenue and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing his lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United [fol. 67] States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

The contention of appellee is that he was entitled to priority of payment to the extent of 81 per cent of the funds on deposit with the clerk under section 602(a) of the Reve-

nue Act of 1943. (26 U. S. C. 602(a).) Section 602(a), in so far as material to the present inquiry, is as follows:

"Section 602. Credit Against Federal Unemployment Taxes for Year 1936 to 1942.—(a) Allowance of Credit Against Tax for 1936, 1937, and 1938.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

"(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;

"(2) Without regard to the date of payment with respect to wages paid after September 19, 1939;

"(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, in custody [fol. 68] or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

"The provisions of the Social Security Act in force prior to February 11, 1939, (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year."

As we construe this section, it only removes the restriction as to the time of payment of taxes on wages accrued in the years 1936, 1937, and 1938, in cases where the assets of the taxpayer were in the custody or control of a receiver, trustee or other fiduciary appointed by, or under the control of a court of competent jurisdiction, during the

periods mentioned in paragraph (3) of subsection (a) of said section 602. As so construed, it has no application to the facts in this case. The assets of the insolvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(a)(3) of the Revenue Act of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which reads as follows: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, [fol. 69] in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 [fol. 70] per cent of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment contributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 percent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 percent of the Federal taxes be paid to the Federal government, regardless of the amount which the taxpayer might pay to the State, was to create a fund for the use of the Federal government in the administration of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the administra- [fol. 71] tion of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemployment compensation acts and to assist the States in the administration of such Acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied, for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because of the payments exacted thereunder were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver of [fol. 72] a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payments exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal government. The full amount continues to be taxes due the Federal government either until it is all

paid to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.* 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. [fol. 73] In *United States* v. *Marxen*, 207 U. S. 200, 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 9 L. Ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. Ed. 29.

Appellee also cites and relies on the case of *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. Ed. 638.

As to that part of appellant's claim in case No. 28474 which is for Federal insurance contribution taxes, such taxes are not subject to the credits allowed under section

602(b) of the Revenue Act of 1943. It follows that the claim of appellant in cause No. 28499 and that portion of appellant's claim in cause No. 28474 which is for Federal insurance contribution taxes were debts due the United States and were entitled to priority of payment out of the assets of the insolvent debtors, unless the State of Illinois had such a lien on such assets as would remove them from [fol. 74] the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contented by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property of the debtor, was the filing of this suit on April 2, 1943, whereas, the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of cred- [fol. 75] itors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a

distress warrant, which was levied on the debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 425, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency [fol. 76] or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring themselves. Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the begin-

ning of the tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority, given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory liens, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a long-standing Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 [fol. 77] S. Ct. at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

'Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524, and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion that the taxes due the Federal government were debts due the United States within the purview of section 466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim [fols. 78-79] of the Federal government for Federal insurance contribution taxes in cause No. 28474, or the claim of appellant in cause No. 28490. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit first to appellant for that portion of his claim which is for Federal insurance contribution taxes, with lawful interest thereon, and any balance remaining to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor for unemployment compensation taxes.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 80-81] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—Filed October 17, 1945

On motion of Carter H. Harrison, Collector of Internal Revenue for the First Collection District of Illinois, by J. Albert Woll, United States attorney for the Northern District of Illinois, for an order to recall and stay the mandate in the above entitled action to and including December 16, 1945,

It Is Hereby Ordered that the mandate in the above entitled cause be recalled from the Circuit Court of Cook County, Illinois, and that said mandate be stayed to and including December 16, 1945.

Enter:

(S.) Francis S. Wilson, Justice of The Illinois Supreme Court.

October 16, 1945.

[fol. 82] In the Supreme Court of Illinois

[Title omitted]

Praecipe for Record for Use on Application to the Supreme Court of the United States for Writ of Certiorari—Filed Dec. 5, 1945.

The appellee in the above entitled cause hereby requests and directs you to prepare and duly certify a transcript of record in the above entitled cause and to include therein copies only of the following items:

1. Appellant's abstract of record.

2. Original opinion of the court, filed May 23, 1945.

3. Judgment of this court.

4. Notice of intention to file petition for rehearing.

5. Petition for rehearing.

6. Order denying petition for rehearing, with modifications.

[fol. 83] 7. Final opinion, including modifications ordered at the time of the denial of the petition for rehearing, filed September 17, 1945.

8. Second judgment rendered September 17, 1945, (if such judgment appears of record).

9. Order re stay of mandate.

10. Heading of Argument I which appears in bold face on page 8 of the Appellee's Brief in the Illinois Supreme Court.

11. Heading of Argument III, which appears in bold face on page 31 of Appellee's Brief in the Illinois Supreme Court.

12. Heading of Argument IV, which appears in bold face on page 35 of Appellee's Brief in the Illinois Supreme Court.

13. Heading of Argument V, which appears in bold face on page 39 of Appellee's Brief in the Illinois Supreme Court.

14. This praecipe for record, with proof of service.

15. Clerk's certificate.

George E. Barrett, Attorney General of the State of Illinois, Attorney for Appellee.

Proof of Service

Received a copy of the above and foregoing Praecipe for Record and proof of service thereof this 4th day of December, A. D. 1945.

J. Albert Woll, Attorney for Appellant. United States Attorney.

[fol. 84] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 85] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 16th, 1946.

Dated this 4th day of December, 1945.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

[fol. 86] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 25, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.